MT LEGISLATIVE HISTORY

Chapter 399 1979

Bill H ____ S 243 Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s) Mar 12 ✓C
Mar 16 ✓C
____ ___C
____ ___C

Date Out Mar 16 ✓C

S. Committee on Judiciary

Hearing Date(s) Feb 05 ✓C
Feb 18 ✓C
____ ___C
____ ___C

Feb 19 ✓C

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

IN THE SENATE

March 24, 1979

Returned from second house.
Concurred in. Sent to enrolling.

Reported correctly enrolled.

LC 0441/01

INTRODUCED BY _____ BILL NO. 243

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STATUTES REGARDING THE PROCEDURE FOR OBTAINING AND DISSOLVING OR MODIFYING PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; PROVIDING THAT TEMPORARY RESTRAINING ORDERS WILL EXPIRE WITHIN 10 DAYS UNLESS RENEWED; PROVIDING FOR THE FORM AND SCOPE OF PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; AND AMENDING SECTIONS 27-19-301, 27-19-305, 27-19-306, 27-19-401, and 27-19-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-19-301, MCA, is amended to read:

"27-19-301. When notice of application required. ~~The order may be granted upon or without notice, in the discretion of the court or judge, unless the defendant has answered, in which case it can be granted only upon notice or an order to show cause. In no case shall an injunction order be issued without notice unless it appears to the court or judge that irreparable injury would result by the delay of giving notice.~~ Except as provided in 27-19-302, no preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application therefor."

Section 2. Section 27-19-305, MCA, is amended to read:

"27-19-305. Restraining Temporary restraining order. Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the defendant, until the hearing and decision of the application, by an order which is called a temporary restraining order. ~~In no case shall a restraining order be issued without notice unless it appears to the court or judge that irreparable injury would result by the delay of giving notice.~~"

NEW SECTION. Section 3. Form and scope of injunction or restraining order. An order granting an injunction or a restraining order shall:

(1) set forth the reasons for its issuance;

(2) be specific in its terms;

(3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and

(4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

NEW SECTION. Section 4. When restraining order may

be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

Section 5. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge ~~may~~ shall require~~, except when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a party, plaintiff,~~ a written undertaking ~~on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction if the court finally decide that the plaintiff was not entitled thereto~~ to be given by the plaintiff, in such sum as the court considers

proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The undertaking may not be required in domestic disputes or when the state or a state agency, a county or subdivision thereof, or a municipal corporation is the party seeking the injunction or restraining order. In any case, the court in its discretion may waive the undertaking in the interest of justice.

(2) Within 5 days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If the plaintiff fails to do so, such plaintiff is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."

NEW SECTION. Section 6. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be indorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes.

NEW SECTION. Section 7. Extension of expiration date. The time fixed in the order for its expiration may be extended, for good cause shown, for a like period or, if the party against whom the order is directed consents, for a longer period. The reasons for the extension must be entered in the record.

NEW SECTION. Section 8. Application for injunction to be heard without delay. Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if he does not do so, the court or judge shall dissolve the temporary restraining order.

NEW SECTION. Section 9. Motion to dissolve or modify restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice as the court or judge may prescribe,

the adverse party may appear and move that the order be dissolved or modified. The court shall hear and determine such motion as expeditiously as the ends of justice require.

Section 10. Section 27-19-401, MCA, is amended to read:

"27-19-401. Application to dissolve or modify injunction granted without ~~notice~~ a hearing. If an injunction order be granted without ~~notice~~ a hearing, the defendant, at any time before the trial, may apply, upon reasonable notice or upon order to show cause returnable at a specified time or forthwith after service thereof, to the judge who granted the injunction order or to the court in which the action is brought to dissolve or modify the same. The application may be made upon the complaint and affidavit on which the injunction order was granted or upon affidavit on part of defendant, with or without the answer."

Section 11. Section 27-19-406, MCA, is amended to read:

"27-19-406. Costs upon dissolution. Where an injunction order is granted without ~~notice~~ a hearing and the same is afterward dissolved upon application of the party enjoined thereby, the court or judge to whom the application to dissolve is made may award as costs of the application, against the plaintiff and in favor of the party applying, such sum as to the court or judge may appear just, not less

SB 249

than $10 or more than $100."

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 3, 1979

The twenty-fifth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman in Room 331 of the capitol building at 9:37 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 243:

Senator Towe gave an explanation of this bill and stated that it was requested by the attorney general's office. This bill is an act to revise the statutes regarding the procedure for obtaining and dissolving or modifying preliminary injunctions and temporary restraining orders, etc. He introduced Mike McGrath from the attorney general's office, who stated that they had found a number of cases where the state is a party, that a court had entered a temporary restraining order against a state board without any hearing. The order was in effect for 2 1/2 years and he stated that he personally felt that twenty days might be more reasonable. He offered many amendments to this bill. (See Exhibit I.) He said that there were two things the amendments hoped to do - (1) add a preliminary injunction to the process and (2) broaden the scope of a temporary restraining order. He also said that it would not be necessary to get a temporary restraining order from some kind of an emergency situation and he explained that the most significant amendment is #3, which adds a whole new section.

There were no further proponents and no opponents.

J.C. Weingartner, representing the State Bar Association, gave a statement saying that they have problems with page 5, section 7, regarding the extension of temporary restraining orders and he said that he was not sure if they could just make a telephone call; and he thought that that section should be more specific and allow for telephone calls. He noted that some judges are just not available in this time frame.

Mike Young, Administrator for the Insurance and Legal Division of the Department of Administration, made a statement and said that it was too narrow in scope and recommended changes.

Senator Olson wondered why the amendments were not in the original bill. Mike McGrath stated that this was his fault, that when they originally put the bill together, they were only referring to temporary restraining orders but that it would have no purpose unless preliminary injunctions were handled as well.

There was some discussion on the effect of section 27-19-303 between Senator Towe and Mike McGrath, which is amendment #4 on the amendments introduced by Mike McGrath. Mr. McGrath stated that the possibility of getting a temporary restraining order without filing a lawsuit is why this amendment is there.

There were no further questions and the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 261:

Senator Turnage gave an explanation of this bill, which is an act to provide sovereign immunity from liability resulting from the design, construction, maintenance, and improvement of public highways and from dangerous surface conditions caused by weather.

Mike Young, administrator for the Insurance and Legal Division of the Department of Administration, gave a statement in support of this bill. He testified that they anticipate six cases a year and figure on one-fourth of a million dollar loss a year and that they had paid out in one year $785,000.00 in losses on highway design cases and that many involved winter weather conditions and that more and more these cases involved multi-car accidents. He stated that Montana has thousands of miles of road to maintain, that it doesn't matter what kind of road we are talking about, and they have no specific figures on claims.

Jim Beck, Chief Right-of-Way Attorney for the Legal Division of the Department of Highways, gave a statement in support of this bill and he stated that he feels that this is something that does need to be carried out.

Michael Stephens, representing the Montana Assocation of Counties, gave a statement in support of this bill.

Dan Mizner, representing the Montana League of Cities and Towns, stated that the cost of liability insurance is multiplying, that the taxpayers are getting hit pretty hard, the cost of defense alone is multiplying and thereby the costs to cities and towns and they, therefore, support this bill.

Glen Drake, representing the American Insurance Association, said that one of the major costs in writing insurance is this cost factor of highway design and the cost of defending lawsuits. He said that this has to be the major portion of any policy and that this is the type of case where sovereign immunity should be available if the people of Montana believe in sovereign immunity at all.

Mike Meloy, representing the Montana Trial Lawyers' Association, gave a statement in opposition to this bill. He said that no one yet has mentioned the word "negligence" and this

Date 2/3/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)			
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

Please sign & return to secretary.

SENATE _____ COMMITTEE

BILL _____ VISITORS' REGISTER DATE 2-3-79

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPC
LARRY GRAHL	City of Billings	261	✓	
Carol L. Kirkland	Mont. Petroleum Assn.	274		
[illegible]	Dept. Admin.	261	✓	
[illegible]	[illegible]	261	✓	
[illegible]	Federated Mts. Bank of Mont	261	✓	
Michael Stephen	MT Assoc. of Counties	261	X	
[illegible]	[illegible]	261		✓
[illegible]	[illegible]	261		✓
Jim Mackler	Mont. Coal Council	274		
BILL MURRAY	CITIZEN	261		✓
[illegible]	[illegible]	243		
M McGRATH	Atty Gen	243	X	
[illegible]	Business Regulation	54	✓	
[illegible]	City of Billings	261	✓	
[illegible]	Public Service Com	261	X	
[illegible]	Town of Fort Benton	261	X	
[illegible]	MONTANA TRIAL LAWYERS	261		✓
[illegible]	American Ins. Ass'n	261	✓	
[illegible]	Mont. Petrol. Assn	274		?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Section 1. Amend 27-19-301. When notice of application required.

current law - a judge has the discretion to issue an injunction without notice if he feels that irreparable injury would result from the delay.

proposed bill - a court or judge could not issue a preliminary injunction without reasonable notice to the adverse party (except in cases involving corporations and the state - 27-19-302).

Section 2. Amend 27-19-305. Restraining order.

proposed bill - charges, the name of a restraining order to temporary restraining order and deletes language about notice which is covered in section 4.

Section 3. New. Form and scope of injunction or restraining

Specifies the form and scope of an injunction or restraining order.

Section 4. New. When restraining order may be granted without notice.

Specifies the only situation when a temporary restraining order can be issued without notice.

Section 5. Amend 27-19-306. Security for damages.

current law - a judge has discretion to require a person seeking an injunction or restraining order to give a written undertaking with sureties to cover damages caused to the adverse party if it is determined that the injunction should not have been granted.

proposed bill - requires a judge to require the party to give a written undertaking but gives the judge authority to waive the undertaking in the interest of justice.

Section 6. New.

Specifies the contents and filing of temporary restraining orders issued without notice; a temporary restraining order will expire in 10 days.

Section 7. New.

The expiration date can be extended.

Section 8. New.

When a restraining order is granted without notice, the application for the injunction is to be heard without delay.

Section 9. New.

The adverse party can ask the court to dissolve or modify a temporary restraining order granted without notice.

Section 10. Amend 27-19-401.

Section 11. Amend 27-19-406.

These 2 sections are amended to reflect new policy that an injunction cannot be granted without notice.

Amendments to introduced copy of Senate Bill No. 243, an act to revise the statutes regarding the procedure for obtaining and dissolving or modifying preliminary injunctions and temporary restraining orders.

1. Page 1.
Following: line 14
Insert: "Section 1. Section 27-19-201, MCA, is amen to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear ~~by the complaint~~ that the ~~plaintiff~~ applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear ~~by the complaint or affidavit~~ that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the ~~plaintiff~~; applicant;

(3) when it shall appear during the litigation that the adverse party ~~defendant~~ is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the ~~plaintiff's~~ applicant's rights, respecting the subject of th action, and tending to render the judgment ineffectual;

(4) when it appears ~~by affidavit~~ that the ~~defendant~~; adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the ~~plaintiff~~; applicant, an injunction order may be granted to restrain the removal or disposition." "

Renumber: All subsequent sections

2. Page 1, line 23
Strike: "Except as provided in 27-19-302,"
Strike: "no"
Insert: "No"

3. Page 2.
Following: line 1
Insert: "New section. Section 3. When hearing on application required. Before granting an injunction the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted and the adverse party may in the meantime be restrained as provided in 27-19-305,"

Renumber: all subsequent sections

4. Page 2.
Following: Section 3 above
Insert: "Section 4. Section 27-19-303, MCA, is amended to read:

27-19-303. Time of granting injunction, evidence required. The injunction order may be granted at the time of ~~issuing the summons upon the complaint~~ commencing the action or at any time afterward before judgment. ~~upon the complaint, with or without affidavits to support it, and, in the other, the affidavits shall show satisfactorily that sufficient grounds exist therefor. An injunction order shall not be granted on the complaint alone unless:~~

~~(1) it be duly verified;~~

~~(2) the material allegations of the complaint setting forth the grounds therefor be made positively and not upon information and belief.~~

On the hearing of an application for an injunction each party may present affidavits or offer oral testimony." "

Renumber: all subsequent sections

5. Page 4, line 10.
Following: "the"
Strike: "defendant"
Insert: "party enjoined"

6. Page 4, line 11.
Following: "the"
Strike: "plaintiff"
Insert: "party enjoined"
Following: "such"
Strike: "plaintiff"
Insert: "party"

7. Page 6, line 7.
Following: "injunction"
Strike: "granted without a hearing. If an"

8. Page 6, line 8.
Following line 7
Strike: "injunction order be granted without a hearing"
Strike: "the"
Insert: "The"

9. Page 6, line 9.
Following: line 8
Strike: line 9
Insert: "application may be made upon"

10. Page 6, line 14.
Following: "application"
Strike: "may be made upon the complaint and affidavit"
Insert: "must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or the scope of the injunction is too broad."

11. Page 6, line 15.
Following: line 14
Strike: lines 15 and 16

12. Page 6.
Following: line 16
Insert: "Section 14. Section 27-19-403, MCA, is amended to read:
"27-19-403. New undertaking for security following hearing. Upon the hearing of an application to vacate or modify an injunction order, the court or judge may require a new undertaking, in the same or a different sum, to be given by the ~~plaintiff~~ party which received the injunction, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer. "

13. Page 6.
Following: Section 14
Insert: "Section 15. Section 27-19-405, MCA, is amended to read:
"27-19-405. ~~Defendant's~~ Enjoined party's undertaking for security upon dissolution. Upon the hearing mentioned in 27-19-403, the court or judge may vacate the injunction order upon the ~~defendant's~~ enjoined party's executing an undertaking in such form and amount

and with such sureties as the court or judge shall direct, conditioned to indemnify the ~~plaintiff~~ original applicant against loss sustained by reason of vacating such injunction order.

14. Page 6, line 20.
Following: "granted"
Strike: "without a hearing"

15. Page 6, line 24.
Following: "the"
Strike: "plaintiff"
Insert: "party which received the injunction"

16. Page 7, line 2.
Following: line 1
Insert: "Section 15. Repealer. Section 27-19-302, 27-19-304, 27-19-311, and 27-19-402, MCA, are repealed."

Senator Brown moved that on page 4, line 2, following the word, "term", insert the following: "If the court so restricts the sentence," and "Unless the court restricts the sentence,"

Senator Brown moved that the bill be amended on page 4, line 4, by striking "that" and insert "of", and further amend following line 4, by inserting the words, "reasons for the" and on line 5, following the word, "restrictions" insert "." and strike "is required by statute." The motion carried unanimously.

Senator Olson moved the four amendments offered by Joan Mayer. The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion carried with Senator Towe voting no.

DISPOSITION OF SENATE BILL 243:

Joan Mayer from the Legislative Council offered prepared amendments. She stated that if there were no objections to this, she would add remedies to the chapter. Permission was granted. Senator Towe moved the amendments as presented. The motion carried unanimously.

Senator Towe moved the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 283:

Senator Van Valkenburg stated that there was a uniform act in Congress now in this regard and he thought we should wait for a couple years to see what happens there.

Senator Brown moved that on page 1, line 5, after "LIMITATIONS," strike "," and then strike everything to page 7, section 11.

Senator Van Valkenburg moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 214:

Senator Turnage said that this bill would completely turn our present law around. Passage of this bill would adopt the uniform arbitration act. He also stated that it still prevents the courts from reviewing disputes in private matters. Senator Turnage moved that this bill do not pass.

Date 2/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

SB 243

1. Title, line 11.
Strike: "AND"

-1 HB 9 remedies bill

2. Title, line 11.
Following: "SECTIONS"
Insert: "27-19-201,"
Following: "27-19-301,"
Insert: "27-19-303,"

3. Title line 12.
Following: "27-19-306,"
Insert: "27-19-313,"
Following: "27-19-401,"
Insert: "27-19-403, 27-19-405,"
Following: "MCA"
Insert: "; AND REPEALING SECTIONS 27-19-302, 27-304, 27-19-311, AND 27-19-402, MCA"

~~Amendments to Senate Bill No. 213, as introduced to provide for the procedure for obtaining a preliminary injunction~~

~~and temporary restraining order~~

64. Page 1.
Following: line 14
Insert: "Section 1. Section 27-19-201, MCA, is amended to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear ~~by the complaint~~ that the ~~plaintiff~~ applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear by the ~~complaint or affidavit~~ that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the ~~plaintiff~~ applicant;

(3) when it shall appear during the litigation that the adverse party ~~defendant~~ is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the ~~plaintiff's~~ applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears by ~~affidavit~~ that the ~~defendant~~ adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the ~~plaintiff~~ applicant, an injunction order may be granted to restrain the removal or disposition." "

Renumber: All subsequent sections

65. Page 1, line 23.
Strike: "Except as provided in 27-19-302, ~~"no"~~
Following: "matter"
Insert: "No"

6. Page 2.
Following: line 1
Insert: "New section. Section 3. When hearing on application required. Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in 27-19-305."

[redacted]

"Section 4. Section 27-19-303, MCA, is amended to read:

"27-19-303. Time of granting injunction, evidence required. The injunction order may be granted after the hearing at the time of issuing the summons upon the complaint or at any time afterward before judgment upon affidavits. In the one case, the complaint, with or without affidavits to support it, and, in the other, the affidavits shall show satisfactorily that sufficient grounds exist therefor. Upon the hearing each party may present affidavits or oral testimony. An injunction order shall not be granted on the complaint alone affidavits unless:

(1) it they be duly verified;

(2) the material allegations of the complaint affidavits setting forth the grounds therefor for the injunction be made positively and not upon information and belief."

Remember: all subsequent sections

7. Page 2, line 6.
Following: "enjoin the"
Strike: "defendant"
Insert: "adverse party"

8. Page 3, line 25.
Following: "by the"
Strike: "plaintiff"
Insert: "applicant"

9. Page 4, lines 9 and 10.
Following: "injunction, the"
Strike: "defendant"
Insert: "party enjoined"

10. Page 4, line 11.
Following: "the"
Strike: "plaintiff"
Insert: "party enjoined"
Following: "such"
Strike: "plaintiff"
Insert: "party"

11. Page 4, line 13.
Following: line 12
Strike: "plaintiff's"
Insert: "applicant's"
Following: "the"
Strike: "defendant"
Insert: "party enjoined"

12. Page 6.
Following: line 3
Insert: "Section 13. Section 27-19-313, MCA, is amended to read:
"27-19-313. New undertaking for security following hearing. On a hearing to show cause, the court or judge may require a new undertaking, in the same or a different sum, to be given by the plaintiff party who obtained the order, with like sureties and of like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

13. Page 6, line 7.
Strike: "granted without a hearing"

14. Page 6, lines 7 through 9.
Following: "hearing." on line 7
Strike: remainder of line 7 through "trial," on line 9
Insert: "The party enjoined"

15. Page 6, lines 9 through 11.
Following: "apply" on line 9
Strike: remainder of line 9 through "thereof," on line 11

16. Page 6, lines 14 through 16.
Following: "upon" on line 14
Strike: remainder of line 14 through "answer" on line 16
Insert: "reasonable notice or upon an order to show cause returnable at a specified time or immediately after service the The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or the scope of the injunction is too broad."

~~17. Page~~
~~Following~~
~~Insert~~
~~"~~

17. Page 6.
Following: line 16
Insert: "Section 15. Section 27-19-403, MCA, is amended to read:

"27-19-403. New undertaking for security following hearing. Upon the hearing of an application to vacate or modify an injunction order, the court or judge may require a new undertaking, in the same or a different sum, to be given by the plaintiff party who obtained the order, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

Section 16. Section 27-19-405, MCA, is amended to read:

"27-19-405. Defendant's Enjoined party's undertaking for security upon dissolution. Upon the hearing mentioned in 27-19-403, the court or judge may vacate the injunction order upon the defendant's enjoined party's executing an undertaking in such form and amount and with such sureties as the court or judge shall direct, conditioned to indemnify the plaintiff party who obtained the injunction against loss sustained by reason of vacating such injunction order."

18. Page 6, line 20.
Strike: "without a hearing"

19. Page 6, line 24.
Following: "against the"
Strike: "plaintiff"
Insert: "party who obtained the injunction"

20. Page 7.
Following: line 1
Insert: "Section 17. Repealer. Sections 27-19-302, 27-19-304, 27-19-311, and 27-19-402, MCA, are repealed."

STANDING COMMITTEE REPORT

February 19, 1979

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 243

Respectfully report as follows: That Senate Bill No. 243,
introduced bill, be amended as follows:

1. Title, line 11.
Strike: "AND"

2. Title, line 11.
Following: "SECTIONS"
Insert: "27-19-201,"
Following: "27-19-301,"
Insert: "27-19-303,"

3. Title, line 12.
Following: "27-19-306,"
Insert: "27-19-313,"
Following: "27-19-401,"
Insert: "27-19-403, 27-19-405,"
Following: "MCA"
Insert: "; AND REPEALING SECTIONS 27-19-302, 27-19-304, 27-19-311, AND 27-19-402, MCA"

~~DO PASS~~

(continued)

Chairman.

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4. Page 1.
Following: line 14
Insert: "Section 1. Section 27-19-201, MCA, is amended to read:
"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:
(1) when it shall appear by the complaint that the plaintiff applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetual;
(2) when it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the plaintiff applicant;
(3) when it shall appear during the litigation that the adverse party defendant is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the plaintiff's applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;
(4) when it appears by affidavit that the defendant adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the plaintiff applicant, and injunction order may be granted to restrain the removal or disposition.""
Renumber: all subsequent sections

5. Page 1, line 23.
Following: "notice."
Strike: "Except as provided in 27-19-302, no"
Insert: "No"

6. Page 2.
Following: line 1
Insert: "New section. Section 3. When hearing on application required. Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in 27-19-305.
Section 4. Section 27-19-303, MCA, is amended to read:
"27-19-303. Time of granting injunction, evidence required. The injuntion order may be granted after the hearing at the time of issuing the summons upon the complaint or at any time afterward before judgment upon affidavits. In the one case, the complaint, with or without affidavits to support it, and, in the other, the affidavits shall show satisfactorily that sufficient grounds exist therefor. Upon the hearing each party may present affidavits or oral testimony. An injunction order shall not be granted on the complaint alone affidavits unless:
(1) it be they are duly verified;
(2) the material allegations of the complaint affidavits set forth the grounds therefor for the order be made positively and not upon information and belief.""
Renumber: all subsequent sections

(continued)

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7. Page 2, line 6.
Following: "enjoin the"
Strike: "defendant"
Insert: "adverse party"

8. Page 3, line 25.
Following: "by the"
Strike: "plaintiff"
Insert: "applicant"

9. Page 4, lines 9 and 10.
Following: "injunction, the"
Strike: "defendant"
Insert: "party enjoined"

10. Page 4, line 11.
Following: "If"
Strike: "the plaintiff"
Insert: "he"
Following: "so,"
Strike: "such plaintiff"
Insert: "he"

11. Page 4, line 13.
Following: line 12
Strike: "plaintiff's"
Insert: "applicant's"
Following: "the"
Strike: "defendant"
Insert: "party enjoined"

12. Page 6.
Following: line 3
Insert: "Section 13. Section 27-19-313, MCA, is amended to read:
"27-19-313. New undertaking for security following hearing. On a hearing to show cause, the court or judge may require a new undertaking, in the same or a different sum, to be given by the ~~plaintiff~~ party who obtained the order, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."
Renumber: all subsequent sections

13. Page 6, line 7.
Strike: "granted without a hearing"

14. Page 6, lines 7 through 9.
Following: "hearing." on line 7
Strike: remainder of line 7 through "trial," on line 9
Insert: "The party enjoined"

(continued)

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15. Page 6, lines 9 through 11.
Following: "apply" on line 9
Strike: remainder of line 9 through "thereof," on line 11

16. Page 6, lines 14 through 16.
Following: "upon" on line 14
Strike: remainder of line 14 through "answer" on line 16
Insert: "reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad."

17. Page 6.
Following: line 16
Insert: "Section 15. Section 27-19-403, MCA, is amended to read:
"27-19-403. New undertaking for security following hearing. Upon the hearing of an application to vacate or modify an injunction order, the court or judge may require a new undertaking, in the same or a different sum, to be given by the ~~plaintiff~~ party who obtained the order, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

Section 16. Section 27-19-405, MCA, is amended to read:
"27-19-405. ~~Defendant's~~ Enjoined party's undertaking for security upon dissolution. Upon the hearing mentioned in 27-19-403, the court or judge may vacate the injunction order upon the ~~defendant's~~ enjoined party's executing an undertaking in such form and amount and with such sureties as the court or judge shall direct, conditioned to indemnify the ~~plaintiff~~ party who obtained the injunction order against loss sustained by reason of vacating such injunction order.""

18. Page 6, line 20.
Strike: "without a hearing"

19. Page 6, line 24.
Following: "against the"
Strike: "plaintiff"
Insert: "party who obtained the injunction"

20. Page 7.
Following: line 1
Insert: "Section 17. Repealer. Sections 27-19-302, 27-19-304, 27-19-311, and 27-19-402, MCA, are repealed."

And, as so amended,
DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE
HOUSE OF REPRESENTATIVES
March 13, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8 a.m. in room 436 of the Capitol Building. All members were present. Scheduled for hearing were Senate Bills 228, 286, 243, 495, 386, 476, and 271.

SENATE BILL NO. 243: Senator Towe. This bill clears up a very confused area, injunctions, restraining orders, and provides that temporary restraining orders will expire within 10 days unless renewed. On page 1 you will note that the complaint is stricken out. It has always been necessary to file a complaint. We are taking that out, and you may file a separate action. It would probably be the injunction.

On line 23, strike the word, plaintiff and put in advocate. On page 3, no preliminary injunction may be issued without notice to the adverse party. It It will parallel the federal procedure. Section 3 covers what I just stated. The injunction must be granted or oral testimony. Section 305 is a temporary restraining order. It was simply a restraining order. In order to get it you go through the form as set forth in section 6. In section 7 if you want a temporary restraining order without notice you must show that it would cause immediate and irreparable injury.

Section 9, page 6 covers the restraining order without notice. It will expire within 10 days. On the top of page 7, it could be extended for an additional 10 days. It must be set for the earliest possible time.

MIKE McGRATH: This bill was introduced at our request. There have been a number of instances where in our experience state agencies have been enjoined without a hearing and without an exparte order. There has long been confusion in the state of Montana and a preliminary injunction and a temporary restraining order that is consistent with our law and with the due proc has been needed. This bill is consistent with rule 65 and we urge a do pass.

SENATOR TOWE: It would help the state when they get hit with an injunction without notice. He elaborated further.

There was no discussion and no questions and the hearing closed on Senate Bill No. 243.

SENATE BILL NO. 286: Senator S. Brown. This bill would increase the number of associate justices on the supreme court. This bill was amended on the floor of the Senate to provide that two new justices would be elected.

small sheet. On page 7, line 6, insert the word "seized". On page 7, subsection (2) strike "criteria of" and insert "criteria in".

Representative Holmes moved to amend the new section 11 on page 1, by striking "grossly". The amendment failed with only Representative Holmes voting "yes".

The question was called on the amendments of Representative Keedy. The motion to adopt the amendments carried with Representative Pavlovich voting "no'

Representative Keedy moved "be concurred in as amended". The motion carried with a roll call vote of 9 yes, 8 no and 2 absent. Mr. Keedy will carry.

SENATE BILL NO. 106: Representative Lory moved to amend on page 2, line 8 by striking "15-18-501 through 15-18-503" and inserting "2-18-501 through 2-18-503". The motion carried with the vote unanimous. Representative Keedy moved to amend page 1, line 14, by striking "$19,500 and inserting $22,500". The motion carried by unanimous vote after lengthy discussion.

Representative Holmes moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Holmes will carry.

SENATE BILL NO. 88: Representative Kemmis moved to amend page 3, line 7, by striking "has" and inserting "have". Representative Keedy moved to amend page 4, line 5, by strik "in the future", and on page 4, line 19, by striking "hereof". The motion to amend carried in both cases by unanimous vote.

Representative Roth moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Roth will carry.

SENATE BILL NO. 54: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. Representative Kemmis will carry.

SENATE BILL NO. 243: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. This is a companion bill to 54. Representative Kemmis will carry.

SENATE BILL NO. 283: Representative Keedy moved to amend, page 7 by striking section 1 and reinserting

SENATE BILL NO. 243

INTRODUCED BY TOWE

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STATUTES REGARDING THE PROCEDURE FOR OBTAINING AND DISSOLVING OR MODIFYING PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; PROVIDING THAT TEMPORARY RESTRAINING ORDERS WILL EXPIRE WITHIN 10 DAYS UNLESS RENEWED; PROVIDING FOR THE FORM AND SCOPE OF PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; AND AMENDING SECTIONS 27-19-201, 27-19-301, 27-19-303, 27-19-305, 27-19-306, 27-19-313, 27-19-401, 27-19-403, 27-19-405, AND 27-19-406, MCA; AND REPEALING SECTIONS 27-19-302, 27-19-304, 27-19-311, AND 27-19-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 27-19-201, MCA, IS AMENDED TO READ:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear by--the--complaint that the plaintiff applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear by-the-complaint-or-affidavit that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the plaintiff applicant;

(3) when it shall appear during the litigation that the defendant adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the plaintiff's applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears by-affidavit that the defendant adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the plaintiff applicant, an injunction order may be granted to restrain the removal or disposition."

Section 2. Section 27-19-301, MCA, is amended to read:

"27-19-301. When notice of application required. The order--may--be--granted--upon--or--without--notice,--in--the discretion--of--the-court-or-judge,-unless-the-defendant-has answered,-in-which-case-it-can-be-granted-only--upon--notice or--on--order--to-show-cause.-In-no-case-shall-an-injunction order-be-issued-without-notice--unless--it--appears--to--the court--or--judge-that-irreparable-injury-would-result-by-the

REFERENCE BILL

delay-of-giving-notice. Except-as-provided-in-27-19-302x--no NO preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application therefor."

SECTION 3. THERE IS A NEW MCA SECTION THAT READS:

When hearing on application required. Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in 27-19-305.

SECTION 4. SECTION 27-19-303, MCA, IS AMENDED TO READ:

"28-19-303. Time of granting injunction, evidence required. The injunction order may be granted at-the-time-of issuing--the-summons-upon-the-complaint-or after the hearing at any time afterward before judgment upon--affidavits. In the--one--case,-the-complaint,-with-or-without-affidavits-to support-it,-and,-in-the-other,--the--affidavits--shall--show satisfactorily--that-sufficient-grounds-exist-therefor. Upon the hearing each party may present affidavits or oral testimony. An injunction order shall not be granted on the complaint-alone affidavits unless:

(1) it-be they are duly verified;

(2) the material allegations of the complaint affidavits setting forth the grounds therefor for the order

be made positively and not upon information and belief."

Section 5. Section 27-19-305, MCA, is amended to read:

"27-19-305. Restraining Temporary restraining order. Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the defendant ADVERSE PARTY, until the hearing and decision of the application, by an order which is called a temporary restraining order. In-no case-shall-a-restraining--order--be--issued--without--notice unless--it--appears--to--the-court-or-judge-that-irreparable injury-would-result-by-the-delay-of-giving-notice."

NEW SECTION. Section 6. Form and scope of injunction or restraining order. An order granting an injunction or a restraining order shall:

(1) set forth the reasons for its issuance;

(2) be specific in its terms;

(3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and

(4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

NEW SECTION. Section 7. When restraining order may be

granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

Section 8. Section 27-19-306, MCA, is amended to read:

"27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge may shall require, except when the state, a county, or any subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction if the court finally decide that the plaintiff was not entitled thereto to be given by the plaintiff APPLICANT, in such sum as the court

considers proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The undertaking may not be required in domestic disputes or when the state or a state agency, a county or subdivision thereof, or a municipal corporation is the party seeking the injunction or restraining order. In any case, the court in its discretion may waive the undertaking in the interest of justice.

(2) Within 5 days after the service of the injunction, the defendant PARTY ENJOINED may except to the sufficiency of the sureties. If the plaintiff HE fails to do so, such plaintiff HE is deemed to have waived all objections to them. When excepted to, the plaintiff's APPLICANT'S sureties, upon notice to the defendant PARTY ENJOINED of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."

NEW SECTION. Section 9. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be indorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and

entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes.

NEW SECTION. Section 10. Extension of expiration date. The time fixed in the order for its expiration may be extended, for good cause shown, for a like period or, if the party against whom the order is directed consents, for a longer period. The reasons for the extension must be entered in the record.

NEW SECTION. Section 11. Application for injunction to be heard without delay. Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if he does not do so, the court or judge shall dissolve the temporary restraining order.

NEW SECTION. Section 12. Motion to dissolve or modify restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or

on such shorter notice as the court or judge may prescribe, the adverse party may appear and move that the order be dissolved or modified. The court shall hear and determine such motion as expeditiously as the ends of justice require.

SECTION 13. SECTION 27-19-313, MCA, IS AMENDED TO READ:

"27-19-313. New undertaking for security following hearing. On a hearing to show cause, the court or judge may require a new undertaking, in the same or a different sum, to be given by the ~~plaintiff~~ party who obtained the order, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

Section 14. Section 27-19-401, MCA, is amended to read:

"27-19-401. Application to dissolve or modify injunction ~~granted--without--notice--a--hearing~~. ~~If--an injunction--order--be--granted-without-notice--a-hearing,-the defendant,-at-any-time-before-the-trial,~~ THE PARTY ENJOINED may apply, ~~upon--reasonable--notice--or-upon-order-to-show cause-returnable-at-a--specified--time--or--forthwith--after~~

~~service--thereof,~~ to the judge who granted the injunction order or to the court in which the action is brought to dissolve or modify the same. The application may be made upon ~~the-complaint-and-affidavit--on--which--the--injunction order--was--granted--or-upon-affidavit-on-part-of-defendant, with-or-without-the-answer.~~ REASONABLE NOTICE OR UPON AN ORDER TO SHOW CAUSE RETURNABLE AT A SPECIFIED TIME OR IMMEDIATELY AFTER SERVICE THEREOF. THE APPLICATION MUST BE SUPPORTED BY AN AFFIDAVIT SHOWING THAT THERE IS NOT SUFFICIENT GROUND FOR THE INJUNCTION TO CONTINUE OR THAT THE SCOPE OF THE INJUNCTION IS TOO BROAD."

SECTION 15. SECTION 27-19-403, MCA, IS AMENDED TO READ:

"27-19-403. New undertaking for security following hearing. Upon the hearing of an application to vacate or modify an injunction order, the court or judge may require a new undertaking, in the same or a different sum, to be given by the ~~plaintiff~~ party who obtained the order, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer."

SECTION 16. SECTION 27-19-405, MCA, IS AMENDED TO

READ:

"27-19-405. ~~Defendant's~~ Enjoined party's undertaking for security upon dissolution. Upon the hearing mentioned in 27-19-403, the court or judge may vacate the injunction order upon the ~~defendant's~~ enjoined party's executing an undertaking in such form and amount and with such sureties as the court or judge shall direct, conditioned to indemnify the ~~plaintiff~~ party who obtained the injunction order against loss sustained by reason of vacating such injunction order."

Section 17. Section 27-19-406, MCA, is amended to read:

"27-19-406. Costs upon dissolution. Where an injunction order is granted ~~without-notice~~ a hearing and the same is afterward dissolved upon application of the party enjoined thereby, the court or judge to whom the application to dissolve is made may award as costs of the application, against the ~~plaintiff~~ PARTY WHO OBTAINED THE INJUNCTION and in favor of the party applying, such sum as to the court or judge may appear just, not less than $10 or more than $100."

SECTION 18. REPEALER. SECTIONS 27-19-302, 27-19-304, 27-19-311, AND 27-19-402, MCA, ARE REPEALED.

-End-